

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maria Simeone	Team: Team # 6	CCRB Case #: 200602912	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/07/2006 11:45 PM	Location of Incident: BP Gas Station Beach Channel Drive	Precinct: 101	18 Mo. SOL 8/7/2007	EO SOL 8/7/2007	
Date/Time CV Reported Tue, 03/07/2006 9:45 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Tue, 03/07/2006 9:45 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Carlos Fabara	01279	922317	POL ACD

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rolette Cordero	09558	925119	GANG Q
2. POM Eric Konoski	26428	930497	PBQS AC
3. POM Matthew Handelsman	12644	932771	101 PCT
4. POM Kyong Kim	10305	938772	101 PCT
5. POM John Florio	29396	930165	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara stopped and questioned § 87(2)(b) at the corner of Dix Avenue and Beach Channel Drive in Queens.	
B.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara frisked § 87(2)(b) at the corner of Dix Avenue and Beach Channel Drive in Queens.	
C.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara searched § 87(2)(b) at the corner of Dix Avenue and Beach Channel Drive in Queens.	

### Synopsis

On February 7, 2006, at approximately 11:45 p.m., § 87(2)(b) and their infant child were driving home after work. § 87(2)(b) pulled his vehicle into the BP Gas station located on the corner of Dix Avenue and Beach Channel Drive in Queens, to purchase gas. As he made the turn into the gas station, § 87(2)(b) observed an unmarked vehicle pass them, then reverse down the street and turn into the gas station. § 87(2)(b) parked his vehicle by a gas pump and exited his vehicle to go into the convenience store to prepay for his gas when he observed a group of three young black males enter the store before him. After paying for the gas § 87(2)(b) exited the store and as he was walking back towards his car Sergeant Carlos Fabara and three white male officers stopped § 87(2)(b) and Sgt. Fabara asked him "where are you guys going?" Sgt. Fabara told § 87(2)(b) to place his hands in the air and asked § 87(2)(b) if he had any sharps in his pockets (Allegation A). Sgt. Fabara then proceeded to frisk and search him (Allegations B and C). § 87(2)(b) exited the vehicle when she observed § 87(2)(b) being frisked and asked an officer what was happening. When Sgt. Fabara finished searching § 87(2)(b) the officers entered their vehicle and drove away.

§ 87(2)(g)

### Summary of Complaint

#### **CCRB Complaint Response Form**

§ 87(2)(b) filed this complaint in person at the 101<sup>st</sup> Precinct station house on March 7, 2006 (Enc. 4A). In her narrative § 87(2)(b) stated that on the night of February 7, 2006, she and her boyfriend, § 87(2)(b) were on their way home from work at about 11:45 PM when they stopped at the BP gas station on Beach Channel Drive for gas. There were 3 men walking into the gas station's store when § 87(2)(b) got out of the car to go pay for gas. § 87(2)(b) observed an unmarked police car turn down a block off of Beach Channel Drive. The car then quickly backed up and zoomed into the gas station. Four plain-clothes police officers exited the car and asked § 87(2)(b) "Where are you guys going?" as if he was with the 3 men that walked into the gas station before he got out of the car. § 87(2)(b) then got out of the car and observed an officer search § 87(2)(b) without asking him for I.D. and also without their badges in public view. § 87(2)(b) asked what the search was all about and the officers never responded. § 87(2)(b) asked § 87(2)(b) what are they searching you for and he stated, "I don't know." The officers asked § 87(2)(b) if he had anything sharp in his pockets and § 87(2)(b) stated no. The officers continued the search and finally let him go. The officers never searched the other 3 guys, who walked out of the gas station as § 87(2)(b) was being searched. § 87(2)(b) was wearing black hospital scrubs, which is his uniform for work, a red sweatshirt and a red hat. § 87(2)(b) provided the license plate of the officers: #§ 87(2)(b)

#### **§ 87(2)(b) CCRB Statement**

§ 87(2)(b) testified at the CCRB on April 6, 2006. § 87(2)(b) is a § 87(2)(b)-old black man who is § 87(2)(b) (Enc. 7A-D).

On February 7, 2006, § 87(2)(b) was driving home from work § 87(2)(b) with his girlfriend § 87(2)(b) and their infant son. § 87(2)(b) made a left into the BP Gas Station on Beach Channel Drive, in Queens to get gas. § 87(2)(b) was wearing a red sweater, black hospital scrubs and a red doo rag. § 87(2)(b) exited his vehicle, walked to the store window to prepay for his gas and turned around to look back to see which pump he had parked at when he noticed an unmarked vehicle drive by. § 87(2)(b) also noticed three black males in their early 20's walk into the convenience store behind him. § 87(2)(b) did not pay attention to what the three black males were doing. There were three Jamaican males working in the store that evening, whom § 87(2)(b) has seen on previous occasions. § 87(2)(b) paid for the gas and walked back towards his vehicle to begin pumping the gas. The unmarked vehicle pulled into the gas station, parked in front of the store door and four plainclothes male officers exited and approached § 87(2)(b) five feet away from his vehicle. An Asian male with a bulletproof vest over his clothes, 5'10" tall and 30 years old and identified through the investigation as Sergeant Carlos Fabara, asked § 87(2)(b) "where you guys going?" § 87(2)(b) did not know what the officer was talking about because he exited the car alone and when he turned around to look there was no one else present. The remaining three officers were all white males, clean cut and did not say anything. PO2 was a white male,

30 years old, 5'8" tall and 200 pounds. § 87(2)(b) could not recall PO3 and PO4's physical descriptions other than being white males. Sgt. Fabara asked if § 87(2)(b) had anything sharp in his pockets. § 87(2)(b) asked why he was stopped. § 87(2)(b) exited the vehicle and asked what was going on. None of the officers said anything. Sgt. Fabara instructed § 87(2)(b) to place his hands in the air, which he did. Sgt. Fabara opened § 87(2)(b) sweater and patted down § 87(2)(b) from his arms to his ankles. Sgt. Fabara went into § 87(2)(b)'s back pant pocket and took out his wallet but did not look for identification or ask to see any. The officers did not have their shields displayed. § 87(2)(b) asked why he was stopped and being searched, but no one responded. § 87(2)(b) exited the vehicle and asked what was going on but no one responded. After Sgt. Fabara searched § 87(2)(b) the officers got back into their vehicle and made a left on Beach Channel Drive towards Mott Avenue. § 87(2)(b) and § 87(2)(b) walked over to the gas pump and § 87(2)(b) pointed out that the three young males that they had observed early were leaving the store.

After § 87(2)(b) got gas they drove past the 101<sup>st</sup> Precinct and saw the unmarked black Impala parked outside. When they got home § 87(2)(b) called the precinct and spoke with a female officer who told § 87(2)(b) to come into the precinct and file a complaint. § 87(2)(b) went with § 87(2)(b) to the 101<sup>st</sup> Precinct and waited outside while § 87(2)(b) filed a complaint. § 87(2)(b) did not want to file a complaint but § 87(2)(b) insisted because she believed he was being racially profiled.

On October 5, 2006, § 87(2)(b) was shown a photo array of possible subject officers (Enc. 8A-D). Sergeant Fabara was in the second position of the array. § 87(2)(b) identified officer #2 as the subject officer that approached him, instructed him to not move, frisked and searched him. § 87(2)(b) was then shown individual photographs of PO Konoski and PO Handelsman, which he did not recognize.

#### § 87(2)(b) CCRB Statement

§ 87(2)(b) testified at the CCRB on April 6, 2006 (Enc. 6A-D)

On February 7, 2006, § 87(2)(b) and § 87(2)(b) were driving home from work. § 87(2)(b) was driving while § 87(2)(b) was in the passenger seat and their infant son was sleeping in a car seat in the back. § 87(2)(b) noticed a group of three unknown black males in their teens, wearing dark baggy clothes walking towards the gas station convenience store as they pulled in as well as an unmarked police car driving in the opposite direction on Dix Avenue. § 87(2)(b) made a left into the gas station, parked at the middle set of gas pumps and exited the vehicle while § 87(2)(b) noticed the police car reverse down the block towards the gas station and make a right into the gas station. § 87(2)(b) was standing near the gas pump when the unmarked black Impala drove towards the front of § 87(2)(b)'s vehicle and parked facing it on the other side of the gas pump. Four men in plainclothes exited the vehicle. § 87(2)(b) assumed that the men who exited the vehicle were officers. § 87(2)(b) described PO1 as an Asian male, who was later identified through the investigation as Sergeant Carlos Fabara, PO2 a tall, skinny 35 year old white male, PO3 a short 30 year old white male and PO4 white male. § 87(2)(b) was seated in the car when she heard the officers ask § 87(2)(b) "where are you guys going?" § 87(2)(b) responded that he was on his way home from work and stopped to get gas. § 87(2)(b) had his hands on his head and Sgt. Fabara was directly behind him. § 87(2)(b) was wearing hospital scrubs that have two pockets, one on the front left breast area of the shirt and another on right buttocks of the pants, a zip up red sweat shirt that was opened, a red doo rag and his hospital identification around his neck on a chain. § 87(2)(b) exited the vehicle, approached § 87(2)(b) and asked what was going on. § 87(2)(b) was admittedly upset and possibly cursing. Sgt. Fabara patted down § 87(2)(b)'s body and legs and asked § 87(2)(b) if he had any "sharps" in his pockets and he responded that he did not. Sgt. Fabara searched the pockets of his scrubs and sweatshirt pockets. PO2 stood on the right side, PO3 stood on the right side of § 87(2)(b)'s vehicle and PO4 stood next to PO3. § 87(2)(b) None of the other officers spoke. The three youths that had entered the store exited and walked away while § 87(2)(b) was being searched. § 87(2)(b) was never handcuffed. The officers never asked for his identification. The officers never explained why he was being searched. § 87(2)(b) was not issued any summonses.

The incident lasted about 10 minutes. § 87(2)(b) has never seen the officers before or since. § 87(2)(b) went to the 101<sup>st</sup> Precinct immediately after the incident but stated that no one there knew who the officers were so she left and called the precinct from home. § 87(2)(b) spoke with an unidentified officer who informed her that the officers who stopped § 87(2)(b) were Anti-Crime. § 87(2)(b) went to the precinct the next day.

to file a complaint at which time she saw an unmarked black Impala parked outside the precinct, which she believed was the same vehicle that the officers were in. § 87(2)(b) wrote down the license plate number and when she filed her complaint asked the Lieutenant with whom she spoke with how many black Impalas are assigned to the precinct and he responded only one. The next morning § 87(2)(b) was pulled over by one of the same officers from the night before and § 87(2)(b) believes he is being harassed. § 87(2)(b) spoke with PO Singh who told her to file a CCRB complaint.

On October 5, 2006, § 87(2)(b) was shown the same photographs as § 87(2)(b) and did not recognize any of the officers as the subject or witness officers. She stated that the officer in the first position of the photo array looked familiar as one of the officers that was standing by the car and that § 87(2)(b) approached to find out what was going on. § 87(2)(b) did not recognize the two individual photographs of PO Konoski and PO Handelsman.

### **Results of Investigation**

#### **Sergeant Carlos Fabara: CCRB Statement**

Sergeant Carlos Fabara testified at the CCRB on August 2, 2006 (Enc. A-B). Sgt Fabara is a § 87(2)(b)-old Hispanic male. On February 7, 2006, Sgt. Fabara was assigned as the Anti-Crime supervisor for the 101<sup>st</sup> precinct. Sgt. Fabara did not bring his memo book and could not recall what hours he worked, with whom he was working, or what he was wearing. Sgt. Fabara stated that if his memo book did not have any entries for the incident date, it would not have any pertaining to this specific incident. He stated that he would fax his memo book to the investigator once he returned to his command, which he failed to do. Sgt. Fabara's memo book was requested through IAB twice. The second time the request was returned stating that the memo book was damaged in a flood at Sgt. Fabara's prior command. Sgt. Fabara could not recall what he had been doing on February 7, 2006 or where he had been working. Sgt. Fabara did not remember any details about the day. He stated that if he had stopped and questioned anyone that day a 250 would have been prepared. Around the time of the incident Sgt. Fabara's team was PO John Florio (5'9" tall, medium build, white male), PO Matthew Handelsman (6'0" tall, thin build, blonde hair, white male) and PO Eric Konoski (5'6" tall, husky build, white male). Sgt. Fabara did not have any specific recollection of the incident. He did not recall encountering a Black male dressed in hospital scrubs. Sgt. Fabara was shown a photograph of § 87(2)(b) whom he did not recognize and he did not know anyone by that name. Sgt. Fabara could not recall if he had been in the vicinity of the incident at all that day.

Sergeant Carlos Fabara provided a second CCRB statement on November 1, 2006 (Enc. 9C-D). Sgt. Fabara stated that on February 7, 2006, he worked from 6:26 p.m. to 2:10 a.m. with PO Matthew Handelsman and PO Eric Konoski, dressed in plainclothes and in an unmarked vehicle. Sgt. Fabara was informed that the victim when viewing a photo array containing his photograph had identified him as the subject officer. Sgt. Fabara did not bring his memo book to the interview. Sgt. Fabara stated that he had recently been transferred to a different command and could not locate his memo book, which may have been misplaced in the move. Sgt. Fabara could not recall if there were any other officers assigned to Anti-Crime that day, but if there had been it would have been PO John Florio. The interview went off the record until 9:18 a.m. Sgt. Fabara stated that he typically denotes his tours of duty, who he is assigned to work with, special assignments or post changes, "things of significance." Sgt. Fabara is familiar with the location and stated that it is a block off of Mott Avenue, which is a commercial area, and before the residential area. Sgt. Fabara did not recall stopping an individual at the gas station dressed in hospital scrubs. Sgt. Fabara stated that it could have been possible that he was assigned to one vehicle with three additional officers and that this would depend on the specific assignment and availability of vehicles. Sgt. Fabara stated that whether he would frisk an individual or instruct an officer on his team to do so would be a tactical decision and depend on any number of variables. If Sgt. Fabara were to frisk an individual, he would base it upon reasonable suspicion of a penal, misdemeanor or felony and would squeeze and rub the outside of the individual's outer clothing and if he felt an object question what it is.

#### **Officer Matthew Handelsman: CCRB Statement**

Officer Matthew Handelsman testified at the CCRB on July 25, 2006 (Enc. 12A-E). He is a § 87(2)(b) old, 6'1" tall, 185 pound, white man with brown hair and blue eyes. On February 7, 2006, PO Handelsman worked with the 101<sup>st</sup> Precinct Anti-Crime unit with Sgt. Carlos Fabara and PO Eric Konoski from 5:30 p.m. to 2:05 a.m. He was dressed in plainclothes and assigned an unmarked vehicle. PO Handelsman did

not have any entries regarding the incident in his memo book which had the following entries; 1720x0205 101 A/C PO Konoski, Sgt. Fabara. 2036: C summons # § 87(2)(b) 2040: 98. 0205: EOT. PO Handelsman could not recall specifically what he had been doing that evening. He stated that he had numerous interactions with civilians that evening but could not recall any involving § 87(2)(b) PO Handelsman could not recall being at the BP Gas station located on Dix Avenue and Beach Channel Drive. PO Handelsman did not recall stopping any light skinned black males who were accompanied by a female and young infant. PO Handelsman did not recognize § 87(2)(b) when he was shown a photograph. PO Handelsman did not know where the gas station in question is located. PO Handelsman did not recall the incident when given background information that § 87(2)(b) had provided. PO Handelsman had not been working with any other officers that day. PO Handelsman did not have any memo book entries around the time of the incident. The last entry in his memo book was at 8:26 p.m. when he issued a summons. PO Handelsman did not have any independent knowledge of that day, including the summons he issued. He did not recall where he was seated in the patrol vehicle or who the operator was. PO Handelsman stated that his team typically patrol high crime areas where there were problems with robbery but that there were no particular sectors or areas that he could articulate. PO Handelsman could not recall if he had been involved in any kind of enforcement in the vicinity of the incident and that they were the only anti-crime team assigned that day from the 101<sup>st</sup> precinct.

**Officer John Florio: CCRB Statement**

Officer John Florio testified at the CCRB on December 5, 2006 (Enc. 10A-D). PO Florio is a § 87(2)(b)-old, 5'11" tall, 190 pound white male with brown hair and blue eyes. On February 7, 2006, PO Florio was assigned to work from 8:00 a.m. until 4:35 p.m. in traffic court. PO John Florio's memo book stated the following; 0800x1635, Assignment: 101pct Traffic Court. 0800: OFD @ 101 pct. 1000: out to OAB. 1200: 98. 1635: EOT He did not work over time and was not on duty again until after 5.p.m. on February 8, 2006.

**Officer Kyong Kim: CCRB Statement**

Officer Kyong Kim testified at the CCRB on August 23, 2006 (Enc. 13A-D). PO Kim was RDO on February 7, 2006 and February 8, 2006 which was denoted in his memo book.

**Officer Rolette Cordero: CCRB Statement**

Officer Rolette Cordero testified at the CCRB on August 23, 2006 (Enc. 14A-D). On February 7, 2006, PO Cordero was assigned Gang enforcement with PO Dwyer from 4:00 p.m. to 12:00 a.m. He was dressed in uniform and assigned an unmarked vehicle. PO Cordero stated that he was in the 113<sup>th</sup> Precinct station house processing an arrest at the time of the incident, which was denoted in his memo book. The location of the incident is in the confines of the 101<sup>st</sup> Precinct and a far distance from the 113<sup>th</sup> station house. PO Cordero did not leave the confines of the 113<sup>th</sup> Precinct during his tour that day.

**Officer Eric Konoski: CCRB Statement**

Officer Eric Konoski testified at the CCRB on December 6, 2006 (Enc. 11A-D). PO Konoski is a § 87(2)(b)-old, 5'6" tall, 170 pound white man with brown hair. On February 7, 2006, PO Konoski was assigned to the 101<sup>st</sup> precinct anti-crime team with Sergeant Carlos Fabara and Michael Handlesman. They were all dressed in plainclothes and assigned to an unmarked vehicle. PO Eric Konoski- 1730x0205 Assignment: 101 pct; A/C w/ Sgt. Fabara, PO Handelsman. PO Konoski's memo book read as follows; COD: yellow; RMP 532. 2020: 1 male stopped, § 87(2)(b); Heyson/Bisst. 2021: 1 under Heyson/Bisst. 2100:98. 0205: EOT. There were no entries in his memo book between 9:00 p.m. and 2:05 a.m. when he was end of tour. He did not have any recollection of the incident.

**Police Documentation**

There was no SPRINT generated by the incident (Enc. 23A-B).

Fleet Services Database listed the license plate § 87(2)(b) provided as unmarked black Chevy Imapala, RMP #532, assigned to the 101<sup>st</sup> Precinct (Enc. 24A).

There was no Stop and Frisk report on file for § 87(2)(b) (Enc. 19A-P).

*Roll Calls*

#### *101<sup>st</sup> Precinct*

Sgt. Fabara is listed as the Anti-Crime supervisor with PO Konoski and PO Handelsman. PO Ali and PO Kim were the only other Asian male officers working at the time of the incident. There is no notation as to who was assigned to RMP # 532 (Enc. 17A-L).

#### *101<sup>st</sup> Precinct Detective Squad*

##### *Narcotics Borough Queens*

##### *Patrol Borough Queens South Anti Crime*

There were no Asian male officers scheduled to work at the time of the incident (Enc. 18A-B).

#### *Queens Gang Squad*

PO Rolette Cordero was assigned to suppression from 3:25 p.m. to 12:00 a.m. on February 7, 2006(Enc. 21A-G).

#### *Patrol Borough Queens South*

Sergeant Joseph Mullahey is listed as the PBQS Anti-Crime supervisor and work with Officer Keith Ehrhart (Enc. 23A-B).

### **Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **CCRB History**

This is the first CCRB complaint involving § 87(2)(b) (Enc. 2QA). Of the numerous complaints filed against Sgt. Fabara, he has been substantiated on 10 allegations pursuant to a CCRB investigation in cases 200508693, 200511684, 200512602, 200512992, 200606723, six of which he received charges for and four of which he received instructions (Enc. A-D).

### **Conclusions and Recommendations**

#### **Officer Identification**

§ 87(2)(b) stated that the subject officer was an Asian male accompanied by three white male officers, all in plainclothes. Documents were ordered for all commands with plainclothes officers in the area. § 87(2)(b) provided the license plate of the patrol vehicle she believed was involved in the incident, which Fleet Services Database listed as being assigned to the 101<sup>st</sup> Precinct and at the time of the incident was the vehicle assigned to Sgt. Fabara, PO Handelsman and PO Konoski, all of whom were dressed in plainclothes and acting as Anti-Crime officers for the precinct. All additional Asian male officers that were assigned at the time of the incident were interviewed and their memo book entries provide entries placing them elsewhere. Sgt. Fabara was identified by § 87(2)(b) as the subject officer in a photo array and is therefore being listed as the subject officer of the allegations. While Sgt. Fabara identifies as Hispanic, he could easily be mistaken for Pacific Islander § 87(2)(g)

#### **Officers Not Interviewed**

Sgt. Mullahey and PO Ehrhart were assigned to the Patrol Borough Queens South on February 7, 2006. Sgt. Mullahey does not have any memo book entries for that day, however, PO Ehrhart's memo book states that at 11:26 p.m. they arrested someone at § 87(2)(b) (Enc. 15A-B and 16A-B). The next entry is at 12:50 p.m. and places them at Brinkerhoff Avenue and 107th Ave in Queens, where another individual was arrested for criminal possession of a weapon. The officers were therefore not interviewed since there was documentation of their activities and whereabouts for the date and time in questioned and it would not have been possible for them to have been at the scene.

#### **Disputed Facts**

Sgt. Fabara, PO Handelsman, and PO Konoski denied that they stopped § 87(2)(b) and that an officer frisked and searched him.

### Civilian Credibility

§ 87(2)(g)

### Officer Credibility

§ 87(2)(g) He provided numerous excuses for why he was unable to provide a copy of his memo book entries pertaining to the incident date, which ranged from him forgetting the memo book during his first CCRB appearance which he stated he would later fax to the investigator, to misplacing it prior to his second CCRB appearance, to it being damaged in a flood that occurred while he was still assigned to the 101<sup>st</sup> Precinct. § 87(2)(g)

There are large time gaps in PO Handelsman and PO Konoski's memo book entries and none of them were able to testify as to where they were at that time or what types of jobs they had been conducting that evening.

**Allegation A: Sgt. Carlos Fabara stopped and questioned § 87(2)(b) at the corner of Dix Avenue and Beach Channel Drive in Queens.**

**Allegation B: Sgt. Carlos Fabara frisked § 87(2)(b) at the corner of Dix Avenue and Beach Channel Drive in Queens.**

**Allegation C: Sgt. Carlos Fabara searched § 87(2)(b) at the corner of Dix Avenue and Beach Channel Drive in Queens.**

§ 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) was approached by an Asian man in plainclothes and instructed to place his hands in the air, which § 87(2)(b) complied with. The officer then questioned § 87(2)(b) about the contents of his pockets before frisking and searching him. § 87(2)(b) was never asked for identification and the officers left the scene after nothing was found on him. Sgt. Fabara could not recall any jobs that took place on the date of the incident and did not provide his memo book, which may or may not have had entries establishing his location within the confines of the precinct or incidents that took place. PO Konoski and PO Handelsmen were also unable to recall what they had been doing at the time of the incident, although denied ever being witness to the allegations. As previously noted, § 87(2)(b) identified Sgt. Fabara in a photo array he was shown as the subject officer. The license plate number that § 87(2)(b) provided for the patrol vehicle that was assigned to the officers corresponded with the vehicle assigned to Sgt. Fabara, PO Konoski and PO Handelsman. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: